Water Pollution Control Advisory Council (WPCAC) Meeting
April 19, 2001 9:30 a.m. – 12:45 p.m.
Fish, Wildlife and Parks (FW&P) Conference Room

Attendees

Council Members
Richard Parks, Fishing Outfitters Association of MT
Don Skaar, Dept. of FW&P
Doug Parker, ASARCO
Robert Willems, Conservation Districts
Barbara Butler, Billings Solid Waste Division
Roger Noble, Land and Water Consultants
Don Halverson, United Assoc. of Plumbers & Pipefitters
John Wilson, Montana Trout Unlimited

Other Attendees
Jan Sensibaugh, Department of Environmental Quality (DEQ)
Bob Raisch, DEQ
Mike Suplee, DEQ
John Arrigo, DEQ
Bonnie Lovelace, DEQ
Tom Reid, DEQ
Jim Madden, DEQ
Eric Regensburger, DEQ
Jim Domino, Department of Natural Resources and Conservation (DNRC)

Introduction of John Wilson

Chairman Richard Parks introduced John Wilson to the Committee. John Wilson is the conservation director for Montana Trout Unlimited in Helena. He was appointed to fill the position representing fishing for sports on March 22, 2001.

Approval of Minutes

The WPCAC meeting was called to order by Chairman Richard Parks at 9:40 a.m. The Council approved the minutes from the conference call on February 15, 2001.

Bob Raisch passed out minutes for the Board of Environmental Review's (BER) January 19, 2001 meeting.

Water Quality Nutrient Standards Update

Mike Suplee stated that one of the major projects he is working on right now is the development of Montana's numeric nutrient standards. The Environmental Protection Agency (EPA) has done a number of studies and found that nationally nutrient enrichment problems are one of the major causes of water quality impairment. DEQ has a narrative standard currently in place to deal with algae and nutrient type problems. The standard essentially states that "water

must be free from substances that will create conditions which produce undesirable aquatic life". Science has advanced enough to allow us to move past the general narrative standard and replace it with specific numeric standards. EPA is pushing for the development of numeric standards throughout the nation. The objective of numeric standards is to improve the quality of water in streams, rivers and lakes without causing undue hardship. The actual law that drives numeric standards is in the Federal Register, which states that "EPA expects all states and tribes to adopt and implement numerical nutrient criteria into their standards by the end of 2003". EPA will recommend general numeric target levels for specific nutrients in broad ecoregions across the nation that they will implement if individual states do not pursue numeric nutrient standards on their own. Standards, being based on conditions in the environment, will vary greatly from region to region. EPA has several documents describing what the standards should be in all ecoregions for the various types of waterbodies. Each state will develop its own specific and detailed standards for its individual regions and waterbodies. EPA is supporting DEQs efforts by providing technical guidance, work groups, financial support, and assistance with the large national database which contains a considerable amount of data that will be used for this project.

Step one is to decide what the acceptable levels of algae should be depending on the use and waterbody type. The second step is to select which nutrients are of concern for each type of waterbody. The third step is to build a database from various preexisting data sources and new research studies aimed specifically at answering these questions and collecting new data. Step four is to analyze the data gathered. The fifth step is to develop the criteria ranges for each type of nutrient associated with each type of waterbody. The sixth step is to implement them by presenting them before the BER and passing them into rules. The final step is to monitor and reassess the data and make adjustments as needed. Currently we are working on the first three steps. We are gathering data from as far back as the 1950s from several agencies. The largest storehouse of data is EPA's database called Storet, consisting of data from all federal and state agencies. The key step to the project is to associate all this data with large and small-scale landscape features and group them by waterbody type.

We will start with the ecoregions, which are derived from land use, landform, soils, and natural vegetation. From there make the delineations finer or coarser as needed for waterbody types. We will look for characteristics of waterbodies that will have something in common, e.g. position order of streams and existing water classification system. We will be looking for an observable segregation of nutrient values across the landscape in these different types of waterbodies to see if they can be split into groups significantly different from each other. Classes need to be simple enough to create workable standards. Within each class the waterbodies that are in the best or near best conditions will be referred to as reference sights. These will act as targets for clean up efforts for affected waterbodies of the same class. The criteria for nutrient levels based on the reference sites will be determined as we look at the data. A criteria set too

high will still be impaired and a criteria set too low will be unachievable by other waterbodies.

Don Skaar asked if it was possible that all reference streams nutrients are far below that of any stream considered impacted? Could it be that the point of impairment should be just above the reference streams?

Mike Suplee answered that if we have done the reference stream approach successfully, it should exhibit a range of conditions that support all uses. Reference streams should range from pristine to sufficiently supporting uses but on the marginal side.

Past agency data used as the basis for nutrients in specific waterbody types may be skewed to the high side because it was most likely collected where there were pollution concerns. It is possible that no clear patterns emerge from the data in terms of nutrient distribution to be able create a workable system. There is still a lot of uncertainty in the relationship between algae levels and nutrients in flowing water systems. Regardless of these problems we are proceeding forward. One project this summer is to look for reference streams in the Milk River Basin. This basin was selected because of high nutrient levels, algae problems, and the lack of previous data. We will fill in a data gap for this area and look more into the cause and effect relationship between nutrients and algae.

Barb Butler asked if DEQ was on the same timeline of December 2003 or do you have more time?

Mike Suplee answered that December 2003 was the official deadline. EPA will allow another six months to a year if the state has made sufficient progress. If a state has done nothing, EPA will promulgate their standards. These standards are not very accurate, being too high for some types of systems and too low for others.

Doug Parker asked how are you going to deal with and implement these standards in seeps or areas of livestock use on a very small portion of stream? Are these sites going to be where the standard is going to have to be met or is it on a larger scale? How are you going to deal with a non-point source (NPS) nutrient pollution at a specific point source location?

Mike Suplee answered that assuming we have developed a system that works, the standards will be applied uniformly across the entire stream, not just at the location of the individual problem. The problem will persist all the way down the stream and algae will use the nutrients when given the opportunity. A total maximum daily load (TMDL) will focus on the source of the problem.

Doug Parker said that he was thinking more on the line of enforcement or violation type situations. There will be streams that will have algae growing

where nutrients enter it. Some loads will be large enough to effect the whole stream while others will not. How are you going to deal with the issue of a small load entering the stream and effecting only a small portion of it?

Mike Suplee answered that when it comes to point source dischargers, a TMDL will deal with issuing fines and clean up efforts. There is no situation that we will issue fines that are not taken care of by a TMDL.

Bob Raisch agreed with Mike Suplee's answer but thinks Doug Parker was also getting at sample site selection.

Doug Parker said that he is unsure if all NPS pollution is dealt with through TMDLs. You can collect samples that give you high or low nutrients that won't tell you much about the impact on the stream system on a large scale.

Mike Suplee stated that we might have to take an average of sample sights along the stream. In streams where the nutrients are on average higher than the standard a TMDL may be required.

Doug Parker said that typically this is not how criteria are generally applied. Within any given reference stream, whether seasonal or locationally, there will be a distribution of nutrient levels.

Mike Suplee stated that the criteria would be a single number or very tight range of numbers for that stream type. We will make sure that the standards are applicable at times when it is an issue, for example between the months of June and October. During off months nutrient loads still exist and flow through the system to become a problem somewhere else, which is also an issue to consider.

Roger Noble asked if these numeric numbers would replace the trigger values in the WQB-7? There are some nutrient values related to non-degradation in the WQB-7.

Mike Suplee stated that the values for nutrients not listed in it would be added to the WQB-7.

Bob Raisch stated that probably the most stringent value would stay in effect and remain in the WQB-7. We may have to reconsider the trigger values based on the findings of this project.

Roger Noble asked how do you intend to address lakes?

Mike Suplee said that it would be very similar to rivers. There is already a system in place to determine the type of lake and how clean it is. Using DEQs

and FW&Ps databases to look at these relationships we will create stratification for lakes that may be layered over the ecoregions across the state.

Roger Noble suggested that we look at more than just total nitrogen and total phosphorus for the nutrient standards of a lake.

Mike Suplee agreed that more constituents should be used. Total nitrogen is not particularly useful. We may develop a standard set of values for nitrate, nitrite and total P.

John Wilson asked what are the uses and impairments identified by the EPA? Is there a BOD component for algae?

Mike Suplee answered that recreation and aesthetics are the uses, and the impairments are impacts on aquatic life. When a BOD starts to affect aquatic life it is well beyond aesthetics.

Barb Butler asked what are the percentages for NPS vs. point source pollutants?

Bob Raisch said that in Montana we would have to look at the 303d list to determine specifics. An estimated guess is about half-and-half depending on the type of system. We have a parallel effort concerning biological standards that we can present to the council.

Richard Parks said that a briefing on biological standards would be in order to help understand the rules created from them. Another factor that needs to be addressed in the numeric nutrient standards is the seasonal variation of flow and temperature. Having the standards take affect in certain months may be a solution.

Mike Suplee agreed that we might have one nutrient standard in effect yearlong and a lower value effective during the critical months.

John Wilson asked how much data is from the last two decades and how much is from before this.

Mike Suplee said he hasn't yet had time to look at it. EPA used data only from the 90s to the present to create their standards. This is too restrictive because data from the 70s and 80s is just as accurate. The database we are looking at goes back to the late 50s and early 60s.

Barb Butler asked if this was similar to TMDLs and would need sufficient credible data.

Mike Suplee answered that no, there is no bar to pass and this is not a listing/non-listing issue. There may be cases that will not have enough data to make good suits.

Bob Raisch said that the proposed rules would be subject to WPCAC, BER and public review to work out any problems.

John Wilson asked if EPA would initiate their standards?

Mike Suplee said that we have been putting in a substantial effort and it was unlikely that EPA would step in.

Legislative Updates

Bonnie Lovelace said that one Water Quality Act (WQA) item that was tabled was HB 513, which was directed toward the non-degradation portion of the act involving one-acre single family lots in subdivisions. The only bill that went forward and will require rule making was SB 379. This gives the department rulemaking authority to write rules under the storm water program for construction activities allowing a notice of intent process that matches with the federal process, instead of the review process we currently use. The statute requires a storm water pollution prevention plan, which involves erosion control, handling chemicals, and material handling. These still need to be sent in under this change, but we do not have to review it ahead of time before the project starts. A new set of regulations that address the entire storm water program should be forthcoming this year. Federal rules for phase II storm water will be incorporated into these new regulations. Phase II brings in a couple key elements. One of these is the construction permit requirement threshold went from five acres to one acre. The other one will be a new kind of permit for managing storm water in cities and towns.

Doug Parker asked if cities and towns were for a given size community?

Bonnie Lovelace answered that yes for cities and towns the new population size is 10,000 or more, but can capture smaller ones depending on what is in their discharges. There are certain cities and towns that are listed by the EPA that have to get permits but our regulations need to be broader to include anyone who needs one. These regulations are still being written and are not yet ready for an advisory committee to view them. There will also be a fee change rule forthcoming this year.

John Wilson asked if there were any rules from HB 69?

Bonnie Lovelace replied that there was none at this time relating to water quality.

Barb Butler asked about Cindy Younkin's bill on temporary water quality standards?

Bob Raisch stated that HB 125 is the only one going to be signed that affects our division. Additional amendments were made in the Senate. The goal now states water quality is to "support all designated beneficial uses". The final version also requires the petitioner to modify the implementation plan and schedule to coincide with the boards' actions thirty days after board approves temporary standards. An annual work plan must be submitted thirty days after the board approves temporary standards and every March 1st after that. It retained the three-year review of the board but also allows the department or the board to modify the implementation plan during the interim period if there is convincing evidence. There is no rule making required but we will be implementing these standards.

WQA Administrative Penalty Rules

John Arrigo stated that the BER dismissed an enforcement action we initiated and in doing so directed DEQ to modify the WQA penalty rules. We would like to get a draft set of rules to the board at the mid-May meeting to request authority to initiate rule-making. To make this deadline we need to have a draft notice completed at the end of this month.

Passed out copies of draft revision of the rule and copies of the WQA.

Jim Madden stated ARM 17.30.2003 implements the department's water quality administrative penalty procedures. As the rule stands now it is difficult for the department to assess a penalty in situations where the violator comes into compliance with a notice letter. Statute 75-5-611 offers an opportunity for the violator to come into compliance and avoid penalties, but does not apply if the violation involves 75-5-605. Most violations are covered under statute 75-5-605 and could be liable for administrative penalties, even if the violator comes into compliance. Section 75-5-611 allows minor violators to correct the problem without getting penalized.

Don Skaar asked what would a minor violation be?

Jim Madden said an example of a minor violation would be a record keeping violation. The rule rolls together two statutes incorrectly, 75-5-611, the penalty statute, and 75-5-617, the notice of procedure statute. The intention of this rule revision is to uncouple those statutes and make it clear they are separate. The two statutes are now dealt with in separate paragraphs under the proposed revision to the rules. Statute 75-5-611 has two main procedures. In the first procedure the department will issue a notice letter first, identifying the provision of the statute being violated and calculate the penalty being assessed if corrective action is not taken, before issuing an order. In the second procedure

the department will issue an administrative notice and a penalty order together if the violation involves 75-5-605. Statute 75-5-617 refers to a list of options the department can take for enforcement actions including judicial actions, injunction actions, administrative orders for compliance and penalties, and refers to 75-5-611. Unless the violation represents an eminent threat, the department shall first issue a letter notifying the person of the violation and requiring compliance. This new rule requires us to use the 75-5-611 procedure first in all cases unless it is a violation of 75-5-605.

John Arrigo stated that part of the problem was the notice letter in 75-5-611 was interpreted to be the same as the 75-5-617 letter. This rule proposal distinguishes that there is two different notice letters. All violators will receive a 75-5-617 letter. Under 75-5-611 the DEQ will send 75-5-611 letters to alleged violators if an administrative penalty is desired.

Jim Madden stated that the proposed rule treats them separately. This all came about because of the Agri-Systems case near Hardin, which escaped penalties because they came into compliance regardless of the seriousness of the violation. This will all be clarified and straightened out when the rule is amended.

Barb Butler asked if this rule was cleaned up, would a case like Agri-Systems receive a 75-5-617 notice?

Jim Madden stated that they did receive a 75-5-617 notice in that case and latter a 75-5-611 notice with a 75-5-611 order assessing the penalties. The current rule does not allow the 75-5-611 if they comply with the compliance letter we issued.

Doug Parker asked if they could still go through the judicial penalty option?

Jim Madden said we did not go through the judicial penalty option because the board directed us not to do so. The board felt it was unfair to put the violator through two processes.

Doug Parker asked if under the new revision, would you still be able to go through the judicial process?

John Arrigo stated that we would. We will still retain the corrective action defense allowing us to send a letter stating the violation, the corrective action needed to be taken and the calculated penalty if they fail to comply. If they do comply with the letter, we are barred from assessing a penalty. We need to assess the cases up-front to determine what is warranted. If it is minor they just receive a 75-5-617 warning letter. If it is potentially severe enough to warrant a penalty we will send a 75-5-611 letter indicating what the penalty will be if it is not

remedied. If it is a serious violation that we feel we have to extract a penalty and not give them the corrective action defense we will go straight to a judicial act. When we revise the rule there will be an option to assess an administrative penalty if they do correct it and it is a 75-5-605 violation. Linking 75-5-611 with 75-5-617 barred us from assessing penalties for 75-5-605 violations that have been corrected.

Richard Parks asked when do you expect the BER to act on it? There may not be enough time to give our recommendation.

John Arrigo recognizes that this may require more time to discuss and review it. The board meets on May 18th and we have to have a request to initiate rulemaking prepared by May 4th. We would then go to the board and request permission to initiate rulemaking. Then there would be a formal public review period followed by a hearing. A recommendation would be made to the board at its next meeting on July 20th. The board will decide weither to adopt the rule at that time.

Bob Raisch said that any additional written comments could be taken in the mail up to the time it is ready to go to the board. When will the public notices of the rule making go out?

John Arrigo answered that the public notices would go out after May 18th. The public hearing would be in June. A more official look at this rule for this committee will be in the June meeting.

Barb Butler said that it seems that the decision to send one of these notices with or without an attached order is arbitrary under your discretion.

John Arrigo explained that it is not arbitrary but the department does have discretion in the matter. We have an enforcement response manual, which describes the steps in the process. There are written criteria that determine if a violation is significant. This along with the history of the site is used to determine weither or not we pursue a penalty. There is usually some prior correspondence with the violator to determine how willing they are to comply.

Doug Parker asked if the written criteria were only a department policy and not included in the rule?

John Arrigo answered that at the moment the criteria are only a department policy. EPA designed the technical review criteria. We do not have written criteria on our response to spills, which may be a violation of 75-5-605. We are working on criteria to determine which types of spills require penalties. From there we determine weither an administrative or judicial penalty is in order.

Doug Parker asked if there was a way to document or explain what the criteria is to make these decisions so we can evaluate the impact of the proposed change? How do you determine a violation is considered one or another category? For us to comment on what you are doing we need to understand how you do it.

John Arrigo stated that some of it is in our enforcement response manual, some is in our enforcement agreement with EPA where we formally adopt the technical review criteria, and some we are still formulating. The WQA governs permitted discharges and illegal discharges. There are two types of actions we peruse: permit violations and water pollution incidents.

Doug Parker recommended that the criterion needs to be clearly laid out and easy to understand, otherwise the board may not agree to pass it. Using examples may slant the procedure one way or the other. The general public will also want to know how the department came to the decision. There has been confusion and complication in the past about what the department does, what authority they have, and the stepwise process to their decisions.

John Arrigo agreed and thought it should be in the enforcement manual or as an internal procedure guideline approved by the director. We have been focusing on trying to understand and follow the statute on a regulatory level. From there we would work on the internal procedures which do not necessary have to be rules. There are other laws we work on, which make it difficult to put too much detail in to each one.

John Wilson asked if every alleged violator gets a 75-5-617 notice under the new rule? In addition to that, under 75-5-611, you decide if it is a minor violation that can be fixed or if it is a major 75-5-605 violation that needs either administrative or judicial penalties?

John Arrigo stated that every alleged violator would get a 75-5-617 notice. There are judicial penalties for minor offences as well. The technical review criteria and the unwritten decision process help us decide the significance of the violation and weither it deserves a penalty. These rules help us calculate the penalty. Depending on the penalty amount and other circumstances we make a decision on if we go through the administrative or judicial processes.

Richard Parks observed that if this fixes the problem allowing major violations to be cleaned up and not have a penalty extracted, it would be a desirable rule change.

Roger Noble asked how would the Agri-Systems case be dealt with under the proposed rule change?

John Arrigo stated that first they would receive a 75-5-617 letter informing them of the violation. Depending on the penalty calculation, if it is under $100,000.00, we may consider going with the administrative process. It would be considered a violation of 75-5-605 and alleviate the need for the 75-5-611 letter. A notice of the violation and an order would be issued.

Doug Parker asked how do you make the cut between administrative and judicial penalties and why?

John Arrigo explained that in the administrative enforcement route the orders are appealable and can drag out the process if it is appealed. We prefer administrative enforcement because it is cheaper for all parties, friendlier and more expedient. Administrative penalties are $10,000.00 a day per violation with a maximum of $100,000.00. If it is over this amount we are forced to use the judicial process. The judicial penalties are $25,000.00 a day with no cap. We look at the penalty, the recalcitrance of the violator, our estimation of whether or not they are likely to appeal, the significance and cause of the violation to decide whether to use the administrative or judicial process.

John Wilson asked if this rule change diminishes your ability to assess fines on alleged potential violators?

John Arrigo said no, it opens it up more dealing with 75-5-605 violations without having to issue a 75-5-611 notice.

Jim Madden stated that this allows for more administrative actions without forcing us to go to court.

Doug Parker advised that the rule and letter needed to be clarified in order to avoid having problems with it. The public is going to demand to know how you came about your decisions.

Barb Butler stated that there is a fear that this is a revenue generator.

John Arrigo stated that there is a concern of locking in to enforcement procedure by clarifying the procedure.

Robert Willems agreed that it needs to be clarified and we need to see the final draft.

John Arrigo said that it could be clarified and delayed going to the board if necessary.

John Wilson suggested just explaining the process on how you make the decision. This will help prevent locking in certain levels and retain the ability to have professional judgement on these issues.

State of the Department

Jan Sensibaugh stated that in HB 2, no money has been taken away from DEQ. We were able to get the additional employees we asked for. They have eliminated all the positions that have remained vacant for the past seven months. We will have to make a showing of the need for these employees to be able to get them back. We will be pressed to meet our time frames and it will be difficult to expedite anything. The coal bed methane (CBM) bill, HB 573, currently states that no additional wells will be drilled until the environmental impact statement (EIS) is completed. The wells will also have to do re-injection under the EPA requirements or get a Montana pollutant discharge elimination system (MPDES) permit. Managing CBM water in other ways is permitted as allowable by law. The EIS and TMDLs are our top priorities. We have moved money around so we have everything funded that we needed to in the TMDLs. We will be looking for any additional federal funding to put into the TMDLs. EPA is pushing to get the MPDES permits completed as well. We have put a schedule together on when they will all be completed that the EPA has approved, but with the new ones coming in it makes it difficult to meet the schedule. When the EIS is completed there will be an enormous amount of CBM permits coming in unless we use a general permit.

Bonnie Lovelace stated that in the EIS process we have identified our need to have an analysis of the water management. If the analysis indicates areas in which no discharges are allowed, we need to respond to that. If the analysis indicates it is appropriate to do a discharge then we want to get a general permit into the EIS. We do not know which method we will use yet.

Jan Sensibaugh stated that a general permit in any capacity in the EIS would help ease the workload that individual permits would cause. A bill that defined the process for bonding mines was passed. It provided some deadlines and timeframes for how we calculate bonds, how we do the review, how we negotiate with companies on what those bonding amounts are, and when the bonds are posted. It also included specific reference that when we do reclamation plans and set the bond amounts, compliance with the WQA in its entirety and the Air Quality Act are part of that determination.

DEQ is a regulatory agency; we implement the laws that are passed by the legislature and the rules we promulgate to implement those laws. These laws define DEQ. DEQ needs to educate the public on what we need from them in order to effect our decisions regarding these laws. The public needs reasons and the science behind them to have a case concerning our decision.

John Wilson asked if under 473 (Montana Environmental Policy Act (MEPA)-EISs and Eas) isn't the public now only relegated to give legal advice about what statute is being violated.

Jan Sensibaugh said that anything determined through the MEPA process to be a significant impact would still have mitigation measures identified. Unless it is a part of the laws and rules we permit under, we can't make an adjustment to that permit to address those comments. The department has been implementing it this way in all acts except for the hard rock mining act and the coal act due to court cases. Once the MEPA process has been completed, you can only do what is in the underlying statutes. In the scoping meeting, before the MEPA process begins, if the public came in with real concerns, then we can have the applicant design the project to address these concerns. If we can get the public involved before the projects begin and educate them on what they can do to affect the decisions made, it would prevent having the public unhappy with us later. The public generally does not want to go through the appeal process and become frustrated with the process. The administration is looking to streamline things, but the underlying statutory authority for the clean water act is intact. DEQ will continue to implement the way they have been. The MEPA process will change some but the actual permitting requirements, standard requirements and the rest of it won't change. The biggest thing to me is communication with everyone. All sides need access to all information and to be allowed to input their own opinions. Groups like WPCAC are extremely important in helping DEQ make their decisions. These types of groups should bring issues they see in the general public back to DEQ to allow us to examine them and decide if we do need to make any rule or program changes.

Barb Butler asked if the bill that cleaned up who appeals went to passed?

Jan Sensibaugh answered that it did pass and all appeals go through the BER.

John Wilson asked if DEQ would be able to stay on schedule with all the other demands put on you and can you meet your financial obligations for these projects?

Jan Sensibaugh said that we have sufficient money and employees to do our basic tasks. It may not be physical practically to meet all the deadlines set for us for all the projects.

<u>Implications of Drought Conditions On Mixing Zones</u>

Eric Regensburger stated that the mixing zones are designed for two reasons: to allow the discharge to evenly mix throughout the stream and to allow dilution of discharge to be able to meet standards. In all the permits written for discharges the flow that it is theoretically designed to mix with is called the 7Q10. The 7Q10 is a statistical number designed to approximate the lowest flow that will occur for seven consecutive days, once every ten years, in that stream. This is a built-in drought factor to account for low flow conditions. We also look at the last five years of the permit to find the highest monthly discharge for each year

and average them together. We use this average number with the 7Q10 to make sure they meet standards and non-degradation limits after the discharge has been introduced into the stream. In all the permits we are allowed to reopen the permit before its expiration date if the discharge is exceeding permit limits. We could do this if the flow is well below the 7Q10 in extreme drought or their discharge rates or concentrations increase.

Don Skaar asked what would trigger reopening a permit?

Eric Regensburger answered the most common way was for someone to bring it to our attention or they start violating their discharge limits.

Bonnie Lovelace stated that the option of reopening a permit usually does not get triggered.

Tom Reid stated that to reopen a permit takes a minimum of sixty days in which time a drought could be over with.

Bonnie Lovelace said that there might even be cases where a discharger will be encouraged to continue discharging because it is the only source of water in a serious drought.

Doug Parker asked what percentage of the discharge permits routinely discharge concentrations at or near their permit limits vs. those who discharge concentrations at just a fraction of their limits?

Tom Reid said that the main concerns are technology based BOD and TSS. They operate with a cushion but have to maintain water quality at a certain percentage. The limit is calculated in the beginning to be close to what will actually be discharged in the highest month. The non-degradation load operates at seventy five percent of their permit. Non-degradation allocated load is typically twenty five percent.

John Wilson stated that we are in a continuation of last year's drought. We are looking at possible historic low flows this year, knowing this there are potentials for fish kills. We may possibly be able to forewarn permit holders of potential drought problems.

Richard Parks stated that we might be in a situation where we start seeing violations of discharge standards. A corrective order in terms of adding clean up levels or shutting down may be advised. We can ask dischargers to initiate these because there is no way we can fix this drought crisis.

Eric Regensburger stated that most dischargers do not have monitoring requirements at the end of their mixing zone. They monitor their discharge before it enters the stream and the calculations determine if it will meet the water

quality limit at the end of the mixing zone. The permit limits are usually based on the discharge rate and concentration, not on the concentration at the end of the mixing zone. If the flow is below the 7Q10 we can use calculations to theoretically determine if they are exceeding limits in the mixing zone. We could make a voluntary request to the permit holders and ask them to reduce their discharge amounts during periods when stream flows are low this year.

Roger Nobel asked if we could ask permit holders to hold back their discharges and release it slowly over a greater period of time?

Eric Regensburger answered that could be a possibility, some permit holders do have holding ponds.

Bonnie Lovelace said that is something we can bring to the table for consideration.

Doug Parker asked if this type of scenario is looked at in the MEPA process? You could do an analysis at that time and discover how low the flow could be before they would be violating their permit.

Bonnie Lovelace said that it is not looked at during the MEPA process. We do not have a list indicating that in a drought situation when the stream flow hits certain levels which facilities are going to have problems.

Richard Parks said that with the 7Q10 calculation, there is a considerable cushion integrated into the permit.

<u>Small Community Waste Water Facility and Discharge Permits</u>

Bonnie Lovelace stated that the standards have been on the book but not all have been directly applied. Out of 60 permits, roughly half may not be meeting all of the standards. All communities must now meet all standards. This may mean new management of their system, meeting standards they were not asked to meet before, or they may have to upgrade their system and procedures. All of this may be very costly so funding for these communities is a big issue. What we have done in the past is to look at the chance of people being exposed to this water and what is the beneficial use. The permit writer has been looking at what the beneficial use of the water is and applying the standards as an effluent limit based on that judgement. We have decided that since the standards are on the books we need to be applying all of them to be legal. We can give them three years to meet all these standards. We are working with these communities to write compliance plans and looking for funding for them.

Doug Parker asked what percentage of them are discharging to dry channel or other types of receiving waters?

Tom Reid answered that most go into small receiving waters. We really have to look at them on a case by case issue.

Roger Nobel asked if it is a treatment process problem or technology-limiting problem?

Tom Reid said that in many cases they just have to meet secondary treatment standards. Some issues include disinfecting and ammonia levels. Many systems use lagoons to reduce BOD and TSS to meet the technology-based limits.

Richard Parks asked what is the estimated cost for these updates?

Tom Reid answered that the cost range from $50,000.00 to $100,000.00 for disinfecting a system. If we look beyond to 2005 permits we may be looking at a different level of standards involving TMDLs.

Richard Parks stated that for a small community this is a large sum for them to come up with.

Bonnie Lovelace stated that we might look into the classification of the streams and the actual beneficial uses to lower standards.

Bob Raisch said that if it was misclassified originally it could be handle easily otherwise it will be very difficult to lower the standards. It would be beneficial to coordinate these changes with the TMDL efforts.

Richard Parks asked why disinfecting was considered an option before? Can you explain what that means and whether the disinfecting itself might end up being a different kind of water quality problem?

Tom Reid stated that most communities are going to UV disinfecting to do away with chlorine problems. There is increased energy consumption with UV disinfecting. Over all though it is beneficial to the receiving waters and the uses.

<u>Miscellaneous Issues</u>

Bob Raisch reminded everyone the next WPCAC meeting is scheduled for June 21st.

Richard Parks stated that if anyone has any agenda ideas to submit them to Bob Raisch or himself.

Roger Nobles said that one agenda idea is the Gallatin River being declared an outstanding resource water. I would like to get more information on this and the ramifications of it.

Richard Parks adjourned the meeting at 12:45 p.m.